

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3734 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI  
and  
Hon'ble MR.JUSTICE KUNDAN SINGH

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
  2. To be referred to the Reporter or not? : YES
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

-----  
PRASHANT J CHAVDA

Versus

V R SHAH

-----  
Appearance:

MR P.C. MASTER, Advocate for MR HB SHAH for Petitioners  
MR L.R. POOJARI, ASSTT. GOVERNMENT PLEADER  
for Respondent No. 1, 2

-----  
CORAM : MR.JUSTICE R.K.ABICHANDANI  
and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 07/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

The petitioners who are hand-cart pullers have challenged the provisions of Sections 3, 11, 12, 13 and 14 of the Bombay Public Conveyances Act, 1920, on the ground that they are ultra-vires the Constitutional provisions being violative of the fundamental rights guaranteed to the petitioners by Articles 14 and 21 of the Constitution of India.

2. The petitioners are admittedly drawing wheeled hand-carts for conveyance of goods. According to them, there are about 12,000 hand-carts plied in the city by persons who mostly hail from Rajasthan. Under the provisions of the said Act, they are required to obtain a licence which is to be renewed from year to year. Section 3(1) of the Act provides that no person shall keep or let for hire any public conveyance without a licence granted by the Commissioner of Police. The expression "public conveyance" is defined in Section 2(b) so as to mean any wheeled vehicle drawn or propelled on roads and used for the purposes of plying for hire for the conveyance of persons or goods but does not include a motor vehicle as defined in the Motor Vehicles Act, 1939, or a vehicle running upon fixed rails. The word "driver" is defined so as to include a conductor, attendant or other persons in charge of a public conveyance. The definition of word "driver" in Section 2(d) of the said Act is inclusive one and it need not be confined to drivers of horses as suggested by the petitioners. In the context of the provisions of the said Act, the driver clearly includes a human being who draws a hand-cart which is used for conveyance of goods. It is therefore clear that a hand-cart which is a wheeled vehicle and is drawn on roads would be a public conveyance, if it is used for the purpose of plying for hire for the conveyance of goods. The petitioners are drawing i.e. pulling hand-carts on roads for the purpose of conveyance of goods. Therefore, they are drivers who are drawing public conveyance within the meaning of Clauses (b) and (c) of Section 2 of the Act. Merely because hand-carts are drawn on the roads by human beings, they do not cease to be public conveyance as defined in the said provision, when they are used for conveying goods.

3. Section 11 of the said Act provides that no person shall act as driver of a public conveyance without a licence granted by the Commissioner of Police for the purpose and that such licence shall remain in force for the licensing year, unless sooner determined under the said Act, and further that they would be renewable. The licence would contain particulars and conditions as may

be prescribed by the Commissioner of Police. While granting licence to a driver, the Commissioner of Police shall provide him with a metal badge bearing the number of the licence as laid down by Section 13 (1) of the Act and such badge is to be conspicuously worn by the driver when pursuing his occupation as such driver. Section 14 provides for grant of licence to a driver on a fee which shall be charged at the rate prescribed by the Commissioner of Police.

4. The petitioners have contended that to treat the hand-cart pullers like "animals" is clearly against the spirit and content of Articles 14 and 21 of the Constitution of India and therefore, the provisions of Sections 11 to 14 of the said Act are unconstitutional and void.

5. When hand-carts are used as public conveyance for the purpose of carrying goods, the requirement of licence would be significant in context of the fact that interest of the public is required to be safe-guarded by keeping track of the persons who are in-charge of such public conveyance and are plying them for conveyance of goods. The requirement that a person who is pulling a cart which is used as public conveyance for the purpose of transporting goods should possess a licence as may be granted by the Commissioner of Police, cannot be said to be an irrational or an arbitrary requirement. The public is entitled to know as to who is plying the public conveyance and in the event of anything going wrong it should be possible to trace out the person responsible for carrying the goods. Giving of a metal badge to the driver and a registration number to the public conveyance would help in identifying the driver as well as the hand-cart in which the goods are carried. It is not unknown that offences or other wrongs may be committed in context of the goods which are conveyed in such public conveyances or by their use for illegal purposes. Therefore, the identity of the driver of the public conveyance would be relevant in context of various situations which may have a bearing on the enforcement of law. The fact that a licence is required to be renewed every year also cannot be said to be an arbitrary provision. By the requirement of possessing a licence for the purpose of driving a public conveyance of this type, right to life of a person is in no way affected adversely. Therefore, the challenge against the impugned provisions on the ground that they violate Articles 14 and 21 of the Constitution, is wholly misconceived.

6. The learned Counsel for the petitioners submitted

that Gujarat Bill 14 of 1984, a copy of which is annexed alongwith the affidavit-in-reply, was prepared by which the said Act of 1920 was to be amended by introducing a provision which required licences to be renewed every five years. The learned Assistant Government Pleader states that though a period of sixteen years has passed, that Bill has remained in hibernation and has not become law. It is entirely within the domain of the State legislature to consider as to what amendment should be made in the law and it would not be within the province of this Court to give any direction in that regard as was sought for by the learned Counsel appearing for the petitioners. As the challenge against the Constitutionality of the impugned provisions fails, this petition is rejected. Rule is discharged with no order as to costs.

---

\*/Mohandas